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UNCLAS SECTION 01 OF 04 BANGKOK 001050

SIPDIS

SENSITIVE  
SIPDIS

DEPARTMENT PASS TO USTR JCHOE-GROVES  
COMMERCE PASS USPTO FOR JURBAN

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TAGS: [ECON](#) [ETRD](#) [KIPR](#) [TH](#)  
SUBJECT: SPECIAL 301 REVIEW -- THAILAND

REF: SECSTATE 14937

11. (SBU) Summary and Recommendation: Piracy rates of intellectual property in Thailand remain high and few dramatic steps were taken during 2005 that would predict significant reductions in those rates in the near future. Nevertheless, legislative developments and enforcement actions for the year have been predominantly positive. The RTG continues to tighten its IP legal framework, including enactment of the Optical Disc Law and progress on amending the Copyright Law. Rights holders have seen better cooperation with enforcement officials, particularly with Thai Customs, and have seen the emergence of a more powerful partner in the Department of Special Investigations that holds promise for more and larger seizures of infringed goods in 2006. Thailand has settled in to what portends to be a long-term struggle against infringement. Though decisive victory over piracy seems unlikely anytime soon, we are generally satisfied with the steps being taken on the road to pursue that victory. The Embassy recommends that Thailand remain on the Watch List. End Summary and Recommendation.

12. (SBU) IPR enforcement in Thailand proceeded apace in 2005, without dramatic campaigns to clean up the streets of bootleg merchandise once and for all, but rather with a steady stream of raids and arrests. The Department of Intellectual Property (DIP) released statistics for 2005 showing seizures of 2,261,567 infringing products and 7,689 arrests. Rights holders agreed that the number of overall raids on infringers was up for the year and seizures of contraband merchandise were higher than in 2004, but the total amount of merchandise for sale on the streets of Thailand does not appear to have diminished.

13. (SBU) Individual rights holders have seen progress on reduction of piracy rates on specific products in concert with active enforcement programs. One apparel manufacturer has seen counterfeiting of its product drop 95 percent over the last ten years thanks to ongoing investigations into counterfeit manufacturers and frequent raids of establishments selling contraband copies of its product. Counterfeit sellers have learned it does not pay to counterfeit that particular brand, but that has meant simply that they have moved on to counterfeit other brands where the rights holders are less active.

Police and Customs  
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14. (SBU) Rights holders cite improved cooperation from local police in taking down establishments retailing counterfeit product. Although the rights holders are generally expected to do their own investigations and provide the evidence

necessary to obtain a warrant, police are enthusiastic about participating in raids, not least because the rights holders provide bonuses for successful raids. However, a common complaint is that police fail to follow up on evidence gathered during a raid to pursue the bigger fish, the manufacturers and larger distributors of the counterfeit product. Most often, police on a raid will seize product at the site and bring the 17-year-old girl minding the shop down to the station for booking. Content with a successful raid, and unable (or unwilling) to directly finger the store owner, the police store the seizure for later destruction and file the case away. There have been cases of police units taking ex officio action and seizing counterfeits on their own volition, but rights holders say the actions are not necessarily cost-effective as police expect rewards for making the seizure.

15. (SBU) The Department of Special Investigations (DSI), a disappointment in its formative years as far as IPR enforcement, played a more important role in 2005. DSI, formed as an equivalent to the FBI with enforcement and investigative power to crack down on large-scale crime, including intellectual property crime, initiated three substantial trademark cases and two copyright cases, seizing a total of 189,674 infringing goods for the year. More importantly, minimum thresholds for cases that had hamstrung DSI in the past were lifted as of the beginning of 2006. Previously DSI was restricted to investigating only cases where the value of merchandise was over five million Baht (USD 125,000), based on the value of counterfeit merchandise. The threshold has now been lowered to 500,000 Baht (USD 12,500) and is now based on the value of the legitimate product, enabling DSI to pursue larger numbers of cases. DSI's resources and reputation for being less corrupt than

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the regular police force give some hope for more effective enforcement in 2006.

16. (SBU) The Customs Department was a particularly bright light, showing dramatic improvement and sustained activity in IPR enforcement. Customs was responsible for numerous large seizures and were credited with seizure of 765,438 infringing goods for the year. Rights holders lauded Customs, willingness to undertake ex officio investigations, not only stopping almost 200 pirate shipments in 2005, but also saving rights holders the time and expense of doing investigations expected by other enforcement arms. Customs officials have also shown enthusiasm for participating in enforcement seminars and liaising with customs officials in other countries to crack down on shipments of bootleg merchandise. However, it is notable that nearly all seized shipments are incoming; Customs officials have placed substantially less importance on inspecting outgoing shipments for infringing goods.

IP Court talent being wasted  
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17. (SBU) Thailand's Intellectual Property Court gets high marks for its professionalism and interest in trying IP cases. The court processes a large number of cases annually in a reasonable time frame and with judgments on cases that the legal community considers to be fair. The thirty judges on the court have shown great willingness to participate in IP seminars and are genuinely interested in intellectual property issues and the range of disputes involved. However, resident IP lawyers in Thailand have noticed that the steady stream of routine low-level cases brought to court through police raids on small shops selling bootleg DVDs or blue jeans is taking its toll on judges who are becoming increasingly bored and disillusioned. The IP Court handled approximately 13,000 cases in 2005, nearly all of which were small-time offenders who plead guilty and accepted a relatively small fine as punishment. The low level of penalties exasperates rights holders who see infringers

accepting the fines as simply a cost of doing business, but judges are unwilling to impose harsh punishments on defendants who most everyone agrees are the small fry in the world of counterfeiting. Some judges have begun handing down sentences requiring only community service (sweeping local temples, etc.), and others are advocating decriminalizing low-level IP crime in order to clear their dockets of small-time cases.

¶8. (SBU) The IP Court has been stricter of late on issuance of search warrants out of dissatisfaction with some rights holders who they feel have been abusing the court,s authority. Numerous rights holders (mostly local) have been accused of brandishing warrants to sellers of pirated goods, threatening them with arrest if they do not make &royalty8 payments. Although the rights holders see this as just another revenue stream that would be otherwise lost to them, the Court views it as a form of extortion. As a result, rights holders in general are finding it more difficult to acquire warrants, some of which are valid for only a few hours.

#### Legislation

¶9. (SBU) Thailand,s long-awaited Optical Disc Law went into effect on August 29, 2005. Though too early to have any real effect on enforcement, the Department of Intellectual Property (DIP) said the law has helped them to develop more information on the operations of the 38 optical disc manufacturing plants they monitor. DIP is preparing to collect exemplar discs from each manufacturing line to better track the source of bootleg OD,s using new OD forensics technology being acquired with Embassy assistance and financing. One criticism of the Optical Disc law was that while it required copyright codes, there was no specific requirement to use industry standard SID codes, and DIP developed their own code system. However, DIP says that plants are eligible to use SID codes if they choose and fifteen OD plants, which account for the majority of OD production in Thailand, have opted to do so.

¶10. (SBU) DIP is reviewing intellectual property laws as part of a general overview of all laws by the Thai government. Amendments to the Copyright Law that have been circulating for some time are now with the Cabinet for approval and DIP expects parliamentary approval sometime in

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¶2006. Next on DIP,s agenda for review are amendments to the Patent and Trademark Law. DIP has sought comments for suggested improvements to the law, particularly on measures that may need to be brought into compliance with WTO rules. The Trade Secrets Act is on tap for review for 2007, though implementing regulations for the original Act still have yet to be implemented. The regulations now sit with the Minister of Public Health, but it is expected that action on the draft regulations will not take place until after Thailand completes FTA negotiations with the U.S. DIP has also taken steps toward eventual membership for Thailand in the Patent Cooperation Treaty, the Paris Convention, and organized a committee to examine possible membership in the Madrid Protocol on trademark protection.

#### Internet

¶11. (SBU) The increasing availability of the Internet in Thailand is fueling a nascent but looming demand for illegal downloading of music and movies. Although the penetration rate of the Internet is still low compared to developed countries, analysts predict ten percent annual growth in Internet users, and 60-90 percent annual growth in data rates and bandwidth. Rights holders estimate 80 to 100 sites offer free downloads of infringed music in Thailand. Although Internet service providers have been cooperative in taking

down sites upon request, many of the same sites pop up quickly thereafter on other servers. Enforcement for Internet crime falls to the cybercrime unit of the Economic Crimes Investigation Division of the police, but the unit has limited manpower and broad responsibility for numerous other types of Internet fraud. Although bandwidth is not broad enough to permit rapid downloading of large movie files, the increasing availability of broadband in Thailand makes it more likely that illegal movie downloads will be a greater problem in the future.

#### Training and Public Awareness

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¶12. (SBU) Embassy Bangkok is currently administering a \$265,000 grant to improve IPR enforcement measures for the Thai Customs Department. The two initial phases are complete and U.S. Customs and Border Protection is in the process of developing materials for the next phase, a conference on training the trainers<sup>8</sup> to improve enforcement at all ports of entry in Thailand. The Embassy is also finalizing preparations for purchase of an optical disc forensics machine for the Thai police forensics lab which will enable the police to accurately trace the origin of a counterfeit CD or DVD to the manufacturing line and plant. IFPI developed the technology and has already financed training for several Thai police officials in London in the use of the machine. Once the machine is acquired, DIP is prepared to procure exemplar discs from each optical disc plant in the country to serve as a resource for police to track infringing discs to their source.

¶13. (SBU) DIP has been working with rights holders on public awareness campaigns on infringement, aimed particularly at teenagers. DIP developed a "No Buying, No Selling, No Using" campaign against IPR infringement and have organized public relations campaigns at a number of local shopping areas and in the provinces. Anti-piracy trailers are regularly shown in cinemas. DIP worked with the Business Software Alliance and Microsoft on software asset management and held seminars on end user piracy of software.

#### Comment

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¶14. (SBU) Members of the intellectual property community in Thailand generally agree that, with some notable exceptions, the legislative framework for effective IP enforcement is in place. There exist few if any quick fixes that would dramatically improve enforcement in a short span of time and significantly improve piracy rates. We are now engaged in a long, twilight struggle against infringement which holds no promise for quick or easy victory, nor any guarantee that victory, however it may be defined, will ever be reached. Progress, if it is to be made, will come through steady and determined action, slugging it out daily with the manufacturers, distributors, retailers and importers of counterfeit goods.

¶15. (SBU) Incremental improvements in legislation and

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enforcement measures were made in 2005 and we expect similar incremental improvements in 2006. Although piracy levels remain unacceptably high and commitment to effective enforcement still lower than what anyone would prefer, we continue to see progress across the board in improved legislation, better enforcement cooperation and higher awareness among the public and the RTG of the importance of IPR. There has been little deterioration in any of these areas and for these reasons we see no reason to downgrade Thailand's position on the Watch List.

BOYCE